

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

08 APR -3 AM 7: 54

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

JOHN DOE, STEVE MORRIS, on their)
own behalf and on behalf of those similarly)
situated,)

Plaintiffs,)

v.)

No.

1 : 08-cv-0436-DFH -TAB

PROSECUTOR, MARION COUNTY, INDIANA,)
MAYOR, CITY OF INDIANAPOLIS,)
PROSECUTOR AND SHERIFF OF SCOTT)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF ADAMS)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF ALLEN)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF)
BARTHOLEMEW COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF BENTON)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF BLACKFORD)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF BOONE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF BROWN)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF CARROLL)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF CASS)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF CLARK)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF CLAY)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF CLINTON)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF CRAWFORD)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF DAVIESS)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF DEARBORN)

COMPLAINT-CLASS ACTION

COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF DECATUR)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF DEKALB)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF DELAWARE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF DUBOIS)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF ELKHART)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF FAYETTE)
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PROSECUTOR AND SHERIFF OF FLOYD)
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PROSECUTOR AND SHERIFF OF FOUNTAIN)
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PROSECUTOR AND SHERIFF OF FRANKLIN)
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PROSECUTOR AND SHERIFF OF FULTON)
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PROSECUTOR AND SHERIFF OF GIBSON)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF GRANT)
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PROSECUTOR AND SHERIFF OF GREENE)
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PROSECUTOR AND SHERIFF OF HAMILTON)
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PROSECUTOR AND SHERIFF OF HANCOCK)
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PROSECUTOR AND SHERIFF OF HARRISON)
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PROSECUTOR AND SHERIFF OF HENDRICKS)
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PROSECUTOR AND SHERIFF OF HENRY)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF HOWARD)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF)
HUNTINGTON COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF JACKSON)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF JASPER)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF JAY)

COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF JEFFERSON)
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PROSECUTOR AND SHERIFF OF JENNINGS)
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PROSECUTOR AND SHERIFF OF JOHNSON)
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PROSECUTOR AND SHERIFF OF LAGRANGE)
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PROSECUTOR AND SHERIFF OF LAKE)
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PROSECUTOR AND SHERIFF OF LA PORTE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF LAWRENCE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF MADISON)
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PROSECUTOR AND SHERIFF OF MARSHALL)
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PROSECUTOR AND SHERIFF OF MARTIN)
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PROSECUTOR AND SHERIFF OF MIAMI)
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PROSECUTOR AND SHERIFF OF MONROE)
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MONTGOMERY COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF MORGAN)
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PROSECUTOR AND SHERIFF OF NEWTON)
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PROSECUTOR AND SHERIFF OF NOBLE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF OHIO)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF ORANGE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF OWEN)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF PARKE)

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PROSECUTOR AND SHERIFF OF PERRY)
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PROSECUTOR AND SHERIFF OF PULASKI)
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PROSECUTOR AND SHERIFF OF PUTNAM)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF RANDOLPH)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF RIPLEY)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF RUSH)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF ST.)
JOSEPH COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF SHELBY)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF SPENCER)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF STARKE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF STEUBEN)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF SULLIVAN)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF)
SWITZERLAND COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF)
TIPPECANOE COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF TIPTON)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF UNION)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF)
VANDEBURGH COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF)
VERMILLION COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF VIGO)
COUNTY, INDIANA,)

PROSECUTOR AND SHERIFF OF WABASH)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF WARREN)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF WARRICK)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF)
WASHINGTON COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF WAYNE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF WELLS)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF WHITE)
COUNTY, INDIANA,)
PROSECUTOR AND SHERIFF OF WHITLEY)
COUNTY, INDIANA,)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF / NOTICE OF
CHALLENGE TO CONSTITUTIONALITY OF STATE STATUTE**

Introduction

1. This is a class action challenge to an amendment to Indiana Code § 11-8-8-8, effective July 1, 2008, that requires anyone required to register on Indiana's sex and violent offender registry to execute a blanket consent authorizing the search of the person's personal computer or device with internet capability at any time as well as requiring the person to install, at his or her expense, hardware or software on the person's computer to monitor Internet usage. The amendment represents a flagrant violation of the Fourth Amendment and is unconstitutional. Injunctive and declaratory relief is requested.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this cause pursuant to 28 U.S.C. §§ 1331 and 1343.
3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

4. Declaratory relief is authorized by 28 U.S.C. §§ 2201, 2203 and by Rule 57 of the Federal Rules of Civil Procedure.

5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. John Doe is the pseudonym of an adult resident of Marion County, Indiana.

7. Steve Morris is an adult resident of Scott County, Indiana.

8. The defendants consist of the 92 county prosecutors in Indiana who are responsible for prosecuting violations of Indiana's criminal laws and 91 of Indiana's sheriffs and the Mayor of Indianapolis who, together, represent the "local law enforcement authority" defined by IND. CODE § 11-8-8-2.

Class action allegations

9. Plaintiffs bring this action on their own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

10. The class is defined as:

all persons, current and future, who are required to register as sex or violent offenders pursuant to Indiana law and who are not currently on parole or probation or court supervision.

11. The class meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

- a. The class is so numerous that joinder of all members is impracticable. The precise number of current members in the class is not known, but is believed to number in the many hundreds if not thousands.
- b. There are questions of law or fact common to the class, namely whether the challenged statutory amendment violates the Fourth Amendment to the United States Constitution.

c. The claims of the representative parties are typical of those of the class.

d. The representative parties will fairly and adequately represent the class.

12. The further requirements of Rule 23(b)(2) are met in this case inasmuch as the parties opposing the class have acted or have refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

Legal background

13. Indiana Code 36-2-13-5.5 establishes “an Indiana sex and violent offender website . . . to inform the general public about the identity, location, and appearance of every sex or violent offender residing within Indiana.”

14. A sex or violent offender includes persons convicted of rape, criminal deviate conduct, child molesting, child exploitation, vicarious sexual gratification, child solicitation, child seduction, sexual misconduct with a minor as a Class A, B, or C felony (with certain exceptions), incest, sexual battery, kidnapping if the victim is less than eighteen (18) years of age, criminal confinement of a person under the age of eighteen (18) years of age under certain circumstances, possession of child pornography, promoting prostitution, promoting human trafficking if the victim is less than eighteen (18) years of age, sexual trafficking of a minor, human trafficking if the victim is less than eighteen (18) years of age, murder, voluntary manslaughter, an attempt to commit any of enumerated offenses, a substantially equivalent crime under the laws of another jurisdiction, and certain juvenile offenders. IND. CODE § 11-8-8-5.1(a), (b).

15. The sex and violent offender registry must contain on it: a recent photograph, the registrant’s home address, and the information required by IND. CODE § 11-8-8-8.

16. Indiana Code § 11-8-8-8 currently requires that the registrant provide certain further information including: physical description, vehicular information, whether the offender is a sexually violent predator as defined by Indiana law and whether the person must register for his or her lifetime.

17. Indiana law provides that a sex or violent offender is required to register until the expiration of ten (10) years following the later of when he or she is released from prison, placed in a community transition program, community corrections program, or when he or she is placed on parole or probation. IND. CODE § 11-8-8-19(a).

18. However, certain offenders are required to register for life, including those deemed to be sexually violent predators, those convicted of at least one offense against a victim less than twelve (12) years of age when the offender was at least eighteen (18) years of age, and those convicted of sex offenses involving force or the threat of force, and those convicted of at least two unrelated sex or violent offenses. IND. CODE § 11-8-8-19(c)-(f).

19. Effective July 1, 2008, IND. CODE § 11-8-8-8(a)(7) requires that the registration information that must be provided include “[a]ny electronic mail address, instant messaging username, electronic chat room username, or social networking web site username that the sex of violent offender uses or intends to use.”

20. Effective July 1, 2008, Indiana law provides that:

- (b) If the sex or violent offender registers any information under subsection (a)(7), the offender shall sign a consent form authorizing the:
 - (1) search of the sex or violent offender’s personal computer or device with Internet capability, at any time; and
 - (2) installation on the sex or violent offender’s personal computer or

device with Internet capability, at the sex or violent offender's expense, of hardware or software to monitor the sex or violent offender's Internet usage.

IND. CODE § 11-8-8-8(b) (eff. 7/1/08).

21. Indiana law provides that if a sex or violent offender knowingly or intentionally fails to register as required or makes a material misstatement or omission while registering as a sex or violent offender he or she commits a class D felony. IND. CODE § 11-8-8-17.

Factual allegations

22. John Doe is currently listed on Indiana sex and violent offender registry and is required to register for life.

23. Mr. Doe has been released from prison since 1999. He is not currently on probation, parole, or any supervised release.

24. Mr. Doe owns his own business and works out of his home.

25. Mr. Doe owns a personal computer located in his home and has an electronic mail address.

26. Mr. Doe also has a cellular phone with internet capability.

27. Mr. Doe uses the personal computer in his business and it contains client information, banking information, as well as communications with attorneys, among other things.

28. Mr. Doe uses his telephone in his business as well.

29. Mr. Doe does not wish to give permission to authorities to enter his home at any time to search his computer and any devices he owns with Internet capability.

30. Mr. Doe does not wish to pay for software or hardware that allows persons outside of his home to monitor his Internet usage.

31. Steve Morris is currently listed on Indiana's sex and violent offender registry and is required to register for life. He is not currently on probation, parole, or any supervised release.

32. Mr. Morris owns a personal computer which is in the home he shares with his wife.

33. Mr. Morris has an electronic mail address.

34. Mr. Morris uses the personal computer for his and his wife's banking and therefore the computer contains confidential financial information.

35. Mr. Morris does not wish to give permission to authorities to enter his and his wife's home at any time to search his computer and any devices with Internet capability that he may possess in the future.

36. Mr. Morris does not wish to pay for software or hardware that allows persons outside of the home to monitor his Internet usage.

37. If Mr. Doe, Mr. Morris, or the members of the putative class refuse to sign the consent form required by the challenged statute they will be subject to arrest and prosecution for committing a Class D felony.

38. Given that families frequently share personal computers, the consent required by the challenged statute will result in searches and seizures of information of parties who are not registrants.

39. At all times defendants have acted and are threatening to act under color of state law.

40. Plaintiffs are being cause, and are being threatened with, irreparable harm for which there is no adequate remedy at law.

Legal claims

41. Indiana Code § 11-8-8-8(b) is unconstitutional as violating the Fourth Amendment to the United States Constitution.

Requested relief

WHEREFORE, plaintiffs request that this Court

- a. Accept jurisdiction of this case and set it down for hearing at the earliest opportunity.
- b. Declare that IND. CODE § 11-8-8-8(b) is unconstitutional as violating the Fourth Amendment to the United States Constitution.
- c. Enter a preliminary, later to be made permanent, injunction preventing enforcement of IND. CODE § 11-8-8-8(b).
- d. Award plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988.
- e. Award all other proper relief.



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